

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DARRYL ORRIN BAKER,

Plaintiff,

vs.

FILED

06 APR 17 2006 CIVIL ACTION NO. 05-147E

UNITED STATES OF AMERICA  
GOVERNMENT OFFICIALS AT  
FCI-MCKEAN, WARDEN, OFFICER  
B. WESEMEN, MEDICAL DEPARTMENT

Defendant's

CLERK )  
U.S. DISTRICT COURT )  
HONORABLE JUDGE MCLAUGHLIN

) MAGISTRATE JUDGE  
SUSAN PARADIS BAXTER

)

)

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION  
TO DISMISS PLAINTIFF'S COMPLAINT, OR IN  
THE ALTERNATIVE, FOR SUMMARY JUDGMENT

AND NOW, comes the Plaintiff, DArryl Orrin Baker, ("hereinafter "PLAINTIFF"), and proceeding pro se and respectfully moves the Honorable Court to Grant the Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint, or in the Alternative for Summary Judgment, and Deny the United States and Government Official's Motion for Summary Judgment Pursuant to Rule 12(b)(1) 12(b)(2), 12(b)(6), and Rule 56 of the Federal Rules or Civil Procedure, for the reasons that follow.

(1) Prusuant to 12(b)(1), the Plaintiff, has established subject matter jurisdiction, and sovereign immunity has been waived because the Defendant's Government Officials has committed a non-deiscretionary act under the Discretionary Function Exception when they violated the Regulation and Policy set forth

by the Warden at FCI Mckean.

(2) Pursuant to 12(b)(6), the Plaintiff has set forth facts based on documentation, and affidavits, that can be proved that the Government Official committed a non-discretionary act.

(3) Pursuant to Rule 56(c) the Plaintiff has set forth a plethora of genuine material facts to overcome summary judgment.

**CONCLUSION**

**Wherefore**, the Plaintiff, respectfully request that this Honorable Court Grant the Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint, or in the Alternative, for Summary Judgment and Deny the United States Government Officials Summary Judgment because the Plaintiff has shown that subject matter jurisdiction, has been established , when the Defendant's violated the Warden's Regulation, and Policy, and Plaintiff, has set forth a genuine material facts for this Honorable Court's determination, and judgment.

Respectfully submitted

BY:

  
Darryl Orrin Baker  
(PRO-SE)  
Reg. No. # 19613-039  
Federal Prison Camp  
P.O. Box 2000  
Lewisburg, PA.  
17837

**EXECUTED: APRIL 10, 2006**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of within Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint, or in the Alternative, for summary Judgment was sent United States First Class Mail on this day April 10, 2006, to and upon the following:

Paul E. Skirtich  
Assistant United States Attorney  
Western District of Pennsylvania  
700 Grant Street, Suite 4000  
Pittsburgh, PA. 15219

Respectfully submitted

BY:   
Darryl Orzin Baker  
(PRO-SE)  
Reg. No. # 19613-309  
Federal Prison Camp  
P.O. Box 2000  
Lewisburg, PA.  
17837

EXECUTED: APRIL 10, 2006

April 10, 2006

Clerk of the Court  
United States District Court  
Western District of Pennsylvania  
Honorable Judge McLaughlin  
Honorable Susan Paradise Baxter  
U.S. Courthouse, Room A250  
17 South Park Row  
Erie, PA. 16501

**RE: United States of America v. Darryl Orrin Baker  
Civil Action No. 05-147E**

Dear Clerk of Court:

Please find inside the Plaintiff's Opposition to United States Government Defendant's Memorandum of Law in Support of Defendant's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment.

Also, the Plaintiff acknowledge that, the Plaintiff has sent a true and exact copy of the same to the United States Attorney Paul E. Skirtich, at 700 Grant Street, Suite 4000 Pittsburgh, PA. 15219.

Respectfully submitted

BY: Darryl Baker  
Darryl Orrin Baker  
(PRO-SE)  
Reg. No. # 19613-039  
Federal Prison Camp  
P.O. Box 2000  
Lewisburg, PA.  
17837

Encl:

cc: AUSA PAUL E. SKIRTICH